



Agricultural Holdings (Scotland) Act 1949

1949 CHAPTER 75

Provisions as to notices to quit

24 Provisions as to giving of notices to quit

- (1) Notwithstanding the termination of the stipulated endurance of any lease of an agricultural holding, the tenancy shall not come to an end unless, not less than one year nor more than two years before the termination of the lease, written notice has been given by either party to the other of his intention to bring the tenancy to an end.

The provisions of this subsection shall have effect notwithstanding any agreement or any provision in the lease to the contrary.

- (2) In the case of a lease continued in force by tacit relocation the period of notice required to terminate the tenancy shall be not less than one year nor more than two years.
- (3) The provisions of the Sheriff Courts (Scotland) Act, 1907, relating to removings shall, in the case of an agricultural holding to which this section applies, have effect subject to the provisions of this section.
- (4) Notice by the landlord to the tenant under this section shall be given either—
- in the same manner as notice of removal under section six of the Removal Terms (Scotland) Act, 1886 ; or
 - in the form and manner prescribed by the Sheriff Courts (Scotland) Act, 1907; and such notice shall come in place of the notice required by the said Act of 1907.
- (5) Nothing in this section shall affect the right of the landlord of an agricultural holding to remove a tenant whose estate has been sequestrated under the Bankruptcy (Scotland) Act, 1913, or who by failure to pay rent or otherwise has incurred any irritancy of his lease or other liability to be removed.
- (6) The provisions of this section relative to notice shall not apply—
- to a notice given in pursuance of a stipulation in a lease entitling the landlord to resume land for building, planting, feuing or other purposes ; or

- (b) to subjects let under a lease for any period less than a year, not being a lease which by virtue of section two of this Act takes effect as a lease from year to year.

25 Restrictions on operation of notices to quit

- (1) Where notice to quit an agricultural holding or part of an agricultural holding is given to the tenant thereof, and not later than one month from the giving of the notice to quit the tenant serves on the landlord a counter-notice in writing requiring that this subsection shall apply to the notice to quit, then, subject to the provisions of the next following subsection, the notice to quit shall not have effect unless the Secretary of State consents to the operation thereof.
- (2) The foregoing subsection shall not apply where—
 - (a) the Secretary of State has consented under this section to the operation of the notice to quit before the giving thereof, and that fact is stated in the notice;
 - (b) the notice to quit relates to land being permanent pasture which the landlord has been in the habit of letting annually for seasonal grazing or of keeping in his own occupation and which has been let to the tenant for a definite and limited period for cultivation as arable land on the condition that he shall, along with the last or waygoing crop, sow permanent grass seeds ;
 - (c) the notice to quit is given on the ground that the land is required for a use, other than for agriculture, for which permission has been granted on an application made under the enactments relating to town and country planning, or for which (otherwise than by virtue of any provision of those enactments) such permission is not required, and that fact is stated in the notice;
 - (d) the Secretary of State, on an application in that behalf made to him not more than nine months before the giving of the notice to quit, was satisfied in relation to the holding that the tenant was not fulfilling his responsibilities to farm in accordance with the rules of good husbandry, and certified that he was so satisfied, and that fact is stated in the notice ;
 - (e) at the date of the giving of the notice to quit the tenant had failed to comply with a demand in writing served on him by the landlord requiring him within two months from the service of the demand to pay any rent due in respect of the holding, or within a reasonable time to remedy any breach by the tenant, which was capable of being remedied, of any term or condition of his tenancy which was not inconsistent with the fulfilment of his responsibilities to farm in accordance with the rules of good husbandry, and it is stated in the notice that it is given by reason of the matter aforesaid;
 - (f) at the date of the giving of the notice to quit the interest of the landlord in the holding had been materially prejudiced by the commission by the tenant of a breach, which was not capable of being remedied in reasonable time and at economic cost, of any term or condition of the tenancy which was not inconsistent with the fulfilment by the tenant of his responsibilities to farm in accordance with the rules of good husbandry, and it is stated in the notice that it is given by reason of the matter aforesaid;
 - (g) at the date of the giving of the notice to quit the tenant was a person who had become notour bankrupt or had executed a trust deed for behoof of his creditors, and it is stated in the notice that it is given by reason of the matter aforesaid.

- (3) Nothing in this section shall apply to a notice to terminate a tenancy of an agricultural holding subsisting under a lease in writing entered into before the fifteenth day of May, nineteen hundred and forty-seven, where—
- (a) immediately before the creation of the tenancy the holding had been for a period of not less than twelve months in the occupation of the landlord ; and
 - (b) the holding is let upon the express terms that, if the landlord desires to resume that occupation before the expiration of a specified period not exceeding seven years, the landlord shall be entitled to give notice to quit without becoming liable to pay to the tenant any compensation for disturbance; and
 - (c) the notice to terminate the tenancy is given so as to enable the landlord to resume occupation of the holding within the specified period.

26 Provisions as to consents for purposes of preceding section

- (1) Without prejudice to the discretion of the Secretary of State in a case falling within paragraphs (a) to (e) of this subsection, the Secretary of State shall withhold his consent under the last foregoing section to the operation of a notice to quit an agricultural holding or part of an agricultural holding unless he is satisfied—
- (a) that the carrying out of the purpose for which the landlord proposes to terminate the tenancy is desirable in the interests of efficient farming, whether as respects good estate management or good husbandry or otherwise ; or
 - (b) that the carrying out thereof is otherwise desirable for the purposes of agricultural research, education, experiment or demonstration or for the purposes of the enactments relating to smallholdings or such holdings as are mentioned in section sixty-four of the Agriculture (Scotland) Act, 1948, or allotments; or
 - (c) where the tenancy was created on or after the thirteenth day of July, nineteen hundred and forty-eight, that the landlord proposes to terminate the tenancy for a purpose, specified in the lease, for which the interest of the landlord was held immediately before the creation of the tenancy, and that greater hardship would be caused by the Secretary of State's withholding than by his granting his consent to the operation of the notice; or
 - (d) where the tenancy was created before the said thirteenth day of July, and the same person was landlord at the beginning of that day as at the time when the notice to quit was given or, if the application for the consent of the Secretary of State is made before giving the notice to quit, at the time of the application, that greater hardship would be caused by the Secretary of State's withholding than by his granting his consent to the operation of the notice ; or
 - (e) that the landlord proposes to terminate the tenancy for the purpose of the land being used for a use, other than for agriculture, not falling within paragraph (c) of subsection (2) of the last foregoing section.
- (2) The Secretary of State shall not give or withhold his consent under the last foregoing section to the operation of a notice to quit an agricultural holding or part of an agricultural holding except after affording to the landlord and to the tenant an opportunity of making representations to the Secretary of State, whether in writing or on being heard by a person appointed by the Secretary of State.
- (3) Forthwith after the giving or withholding of his consent as aforesaid the Secretary of State shall give notice thereof in writing to the landlord and to the tenant.

- (4) If the landlord or the tenant is dissatisfied with the Secretary of State's decision to withhold or to give his consent as aforesaid, the landlord or the tenant may, within twenty-one days after notice has been given to him under the last foregoing subsection, appeal to the Land Court against the decision; and, where an appeal has been so taken, subsection (1), and paragraph (a) of subsection (2), of the last foregoing section and subsection (1) of this section shall have effect with the substitution (except in so much of paragraph (d) of subsection (1) of this section as relates to the application for the consent of the Secretary of State) for references to the Secretary of State of references to the Land Court.
- (5) Where the Secretary of State or the Land Court consents under the last foregoing section to the operation of a notice to quit the Secretary of State or the Court may impose such conditions as appear to the Secretary of State or the Court requisite for securing that the land to which the notice relates will be used for the purpose for which the landlord proposes to terminate the tenancy.
- (6) Where, on an application by the landlord in that behalf, the Secretary of State is satisfied that by reason of any change of circumstances or otherwise any condition imposed under the last foregoing subsection ought to be varied or revoked, he shall vary or revoke the condition accordingly.

27 Provisions supplementary to s.25 and s.26

- (1) The Secretary of State may make regulations—
 - (a) for requiring any question arising under subsection (2) of section twenty-five of this Act to be determined by arbitration under this Act, for limiting the time within which any such arbitration may be required or any proceedings for the purposes thereof may be taken, and for extending the period within which a counter-notice may be given by the tenant under subsection (1) of that section where any such arbitration is required;
 - (b) as to the time within which and the manner in which applications for the Secretary of State's consent to the operation of notices to quit may be made under the said section twenty-five;
 - (c) for suspending the operation of notices to quit until the issue of the arbiter's award or the decision of the Land Court under the last foregoing section ;
 - (d) for postponing the date at which a tenancy is to be terminated by a notice to quit which has effect in consequence of any such award or decision as aforesaid;
 - (e) for excluding the application of subsection (1) of the said section twenty-five in relation to sub-tenancies in such cases as may be prescribed, and for making such provision as appears to the Secretary of State expedient for the purpose of safeguarding the interests of sub-tenants, including provision enabling the Secretary of State or the Land Court, where the interest of a tenant is terminated by notice to quit, to secure that a sub-tenant will hold from the landlord on the like terms as he held from the tenant.
- (2) The power conferred on the Secretary of State by this section shall be exercisable by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

28 Applications for certificates of bad husbandry

- (1) For the purposes of paragraph (d) of subsection (2) of section twenty-five of this Act, the landlord of an agricultural holding may, in the prescribed manner and after giving notice in writing to the tenant of the holding of the proposed application, apply to the Secretary of State for a certificate that the tenant is not fulfilling his responsibilities to farm in accordance with the rules of good husbandry:

Provided that such an application shall not be made at any time while a warning notice is in force under section twenty-seven of the Agriculture (Scotland) Act, 1948 (whether served in pursuance of that section or of this section) in relation to the tenant's farming of the holding.

- (2) Where such an application is made the Secretary of State shall, after affording to the landlord and to the tenant an opportunity of making representations to the Secretary of State, whether in writing or on being heard by a person appointed by the Secretary of State, either—
- (a) give notice in writing to the landlord and to the tenant that he proposes to grant or to refuse the certificate, or
 - (b) serve a warning notice under section twenty-seven of the Agriculture (Scotland) Act, 1948, on the tenant in relation to the farming of the holding to which the application relates;

and if before the expiration of the prescribed period from the making of the application the Secretary of State has not given or served one or other of such notices as aforesaid, he shall be deemed to have given notice in writing to the landlord and to the tenant that he proposes to refuse the certificate.

- (3) Within one month of notice of a proposal being given or being deemed to have been given under the last foregoing subsection the landlord may require that the Secretary of State's proposal to refuse a certificate shall be referred to the Land Court or the tenant may require that the Secretary of State's proposal to grant a certificate shall be so referred.
- (4) Where a holding forms part only of an agricultural unit, an opportunity of making representations shall be afforded under subsection (2) of this section to every person who for any of the purposes of Part II of the Agriculture (Scotland) Act, 1948, is the owner of land comprised in the unit, and paragraph (b) of that subsection shall have effect with the substitution for the reference to the holding of a reference to the unit.

29 Prevention of deterioration of holding after grant of certificate of bad husbandry

- (1) If, while a certificate under paragraph (d) of subsection (2) of section twenty-five of this Act is in force, the landlord within nine months from the application for the certificate gives notice to quit to the tenant, the Secretary of State shall have power, after affording to the tenant an opportunity of making representations to the Secretary of State, whether in writing or on being heard by a person appointed by the Secretary of State, to give to the tenant by notice in writing such directions as appear to the Secretary of State necessary for securing that the holding shall not further deteriorate before the determination of the tenancy.
- (2) Where the tenant contravenes or fails to comply with a direction given under the foregoing subsection—
- (a) he shall be liable on summary conviction to a fine not exceeding one hundred pounds; and

- (b) the Secretary of State may order that the tenancy shall terminate by virtue of the notice to quit at such date earlier than the date specified in that notice as may be specified in the order, being a date not less than three months later than the service on the tenant of notice in writing of the making of the order, and such order shall provide for the reference to arbitration under this Act of any question or difference arising between the landlord and the tenant by reason of the earlier termination of the tenancy.
- (3) Without prejudice to the bringing of proceedings under the last foregoing subsection, where a direction under this section to carry out any work is not complied with and the Secretary of State is satisfied that an adequate opportunity has been afforded to the tenant to carry out the direction, any person authorised by the Secretary of State in that behalf may enter upon the land to which the direction relates and any other land farmed in conjunction therewith, and carry out the work required by the direction; and the reasonable cost of carrying out work in the exercise of powers conferred by this subsection shall be recoverable by the Secretary of State from the tenant.
- Any question arising under this subsection as to what is the reasonable cost of any work shall be determined by an arbiter appointed, in default of agreement, in accordance with the provisions of this Act.
- (4) Any person who obstructs a person acting in the exercise of powers conferred by the last foregoing subsection shall be liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding one hundred pounds or to both such imprisonment and such fine.
- (5) Where a direction under this section provides for the doing of anything within a specified time and (whether before or after the expiration of the said time) the Secretary of State is satisfied that it is reasonable that the said time should be extended, he may extend it accordingly.
- (6) Without prejudice to the general provisions of this Act as to the service of notices, a notice under subsection (1) of this section giving directions shall, where an agent or servant of the tenant is responsible for the control of the farming of the holding, be duly served if served on that agent or servant.

30 Provisions as to breach of condition attached to consent to operation of notice to quit

- (1) If the Secretary of State is satisfied that, within a reasonable time after a notice to quit an agricultural holding or part of an agricultural holding has expired, any condition imposed under subsection (5) of section twenty-six of this Act in connection with consent to the operation of the notice has not been complied with, the Secretary of State may take possession of the land for the purpose of farming it, and—
- (a) on the Secretary of State taking possession of the land any tenancy thereof granted without the approval of the Secretary of State and since the imposition of the condition shall be deemed to have terminated by reason of a notice to quit duly given by the landlord, and
- (b) the Secretary of State may by order require the tenant whose tenancy is deemed to have terminated as aforesaid to give up his occupation of the land.

A certified copy of an order under this subsection requiring a tenant to give up his occupation of any land shall be a sufficient warrant for ejection against the tenant or any party in his right in the event of non-compliance with such order.

- (2) While the Secretary of State is in possession of land under this section it shall be his duty to secure that it is farmed in accordance with the rules of good husbandry either—
- (a) by a person acting under the direction of the Secretary of State, or
 - (b) by a person entrusted by the Secretary of State with the farming thereof on such terms, being terms which in the opinion of the Secretary of State would be appropriate to a letting thereof to a tenant from year to year, as may be agreed between the Secretary of State and the said person;

and subject to the provisions of this section the Secretary of State and the person who, apart from any tenancy deemed to have terminated under paragraph (a) of subsection (1) of this section, for the time being would be entitled to possession of the land but for the exercise by the Secretary of State of his powers under this section (hereafter in this section referred to as "the owner") shall have the like rights against and liabilities to each other as if the Secretary of State were a tenant of the land under a tenancy from year to year beginning on the date on which the Secretary of State took possession of the land and granted by the owner under a lease containing such provisions (other than provisions as to rent or any such payment as is mentioned in the next following subsection) as may be agreed between the Secretary of State and the owner, and providing for the making of payments by the Secretary of State of such amounts at such times as a tenant under such a lease might reasonably be expected to make by way of rent.

- (3) On the Secretary of State taking possession of land under this section there shall be ascertained—
- (a) the amount (if any) in addition to rent which might reasonably have been expected to be payable by an incoming tenant, under the lease referred to in the last foregoing subsection, in respect of things previously done for the purposes of the farming of the land, and in respect of seeds, tillages, growing crops and other matters;
 - (b) the cost of the carrying out of any work which under the rules of good husbandry or under the lease ought to have been carried out on the land by the occupier before the Secretary of State took possession thereof, being work which is necessary for putting the land into good tenantable condition;

and if the said amount is greater than the said cost the difference shall be recoverable from the Secretary of State by the owner, and if less the difference shall be recoverable from the owner by the Secretary of State.

- (4) Where the Secretary of State has taken possession of land under this section, the owner shall, without prejudice to his responsibilities under the rules of good estate management, be liable to the Secretary of State to carry out any work which under the lease with the tenant to whom notice to quit was given he was liable to carry out, being work which is necessary for putting the land into good tenantable condition; and any such liability shall be enforceable by the Secretary of State in like manner as if it were imposed by the lease referred to in subsection (2) of this section.
- (5) The Secretary of State shall be entitled to continue in possession of land under this section—
- (a) where it is being farmed by a person acting under the direction of the Secretary of State, and it is shown to the Secretary of State that the owner has made arrangements satisfactory to the Secretary of State for the farming of the land by himself or by a person approved by the Secretary of State, until the next twenty-eighth day of May or twenty-eighth day of November as may be

- specified in a notice in writing served on the Secretary of State by the owner not later than two months before the said day;
- (b) where it is being farmed by a person to whom the Secretary of State has entrusted the farming thereof, until that person is entitled to possession of the land as tenant thereof under an agreement with the owner approved by the Secretary of State.
- (6) Nothing in subsection (2) of this section shall entitle the Secretary of State, on giving up possession of land, to compensation for disturbance; but save as aforesaid that subsection shall apply as if when the Secretary of State gives up possession he were quitting the land on the termination of the tenancy referred to in that subsection by notice to quit duly given by the owner.
- (7) The enactments relating to income tax, and in particular such of those enactments as relate to the deduction of tax from rent and to the taxation of excess rents, shall apply—
- (a) in relation to payments made under subsection (2) of this section by the Secretary of State to the owner, as if the Secretary of State were a tenant and the owner were a lessor of the land under such a lease as is mentioned in the said subsection (2) and the payments were rent paid thereunder;
- (b) in relation to payments made by any such person as is mentioned in paragraph (b) of that subsection to the Secretary of State, as if the said person were a tenant and the Secretary of State were a lessor of the land under such a letting as is mentioned in the said paragraph (b) and the payments were rent paid thereunder.
- (8) Any question arising under subsections (2) to (6) of this section between the Secretary of State and the owner shall, in default of agreement, be determined by arbitration.

31 Provisions as to notices to quit where holding agreed to be sold

- (1) The provisions of the two following subsections shall have effect where, after the commencement of this Act, notice to quit land being or comprised in an agricultural holding has been given to the tenant and at any time while the notice is current a contract is made for the sale of the landlord's interest in the land or any part thereof.
- (2) Unless within the period of three months ending with the making of the contract the landlord and the tenant have agreed in writing whether on the making of such a contract the notice shall continue in force or be of no effect.—
- (a) the landlord shall, within the period of fourteen days from the making of the contract, or, where the notice to quit expires within the last mentioned period, before the expiration of the notice to quit, give notice in writing to the tenant of the making of the contract, and
- (b) the tenant may before the expiration of the notice to quit notify the landlord in writing that the tenant elects that the notice to quit shall continue in force, so however that the tenant shall not give a notification under this paragraph after the expiration of one month from the receipt by him of a notice under the last foregoing paragraph of the making of the contract.
- (3) In default of any such agreement or notification as aforesaid the notice to quit shall be of no effect unless the landlord has failed duly to give notice of the making of the contract and the tenant quits the holding in consequence of the notice to quit.
- (4) A notice to quit shall not be invalid by reason only that under any such agreement as aforesaid the operation of the notice is conditional.

32 Notices to quit part of holdings not to be invalid in certain cases

- (1) A notice to quit part of an agricultural holding held on a tenancy from year to year given by the landlord of the holding shall not be invalid on the ground that it relates to part only of the holding if it is given—
- (a) for the purpose of adjusting the boundaries between agricultural units or amalgamating agricultural units or parts thereof, or
 - (b) with a view to the use of the land to which the notice relates for any of the purposes mentioned in the following subsection,
- and the notice states that it is given for that purpose or with a view to any such use, as the case may be.
- (2) The purposes referred to in paragraph (b) of the foregoing subsection are the following, that is to say—
- (a) the erection of farm labourers' cottages or other houses with or without gardens ;
 - (b) the provision of gardens for farm labourers' cottages or other houses;
 - (c) the provision of allotments;
 - (d) the provision of small holdings under the Small Land holders (Scotland) Acts, 1886 to 1931, or of such holdings as are mentioned in section sixty-four of the Agriculture (Scotland) Act, 1948 ;
 - (e) the planting of trees;
 - (f) the opening or working of any coal, ironstone, limestone, brick-earth, or other mineral, or of a stone quarry, clay, sand, or gravel pit, or the construction of any works or buildings to be used in connection therewith;
 - (g) the making of a watercourse or reservoir;
 - (h) the making of any road, railway, tramroad, siding, canal or basin, or any wharf, pier, or other work connected therewith.

33 Tenant's right to treat notice to quit part of holding as notice to quit entire holding

Where there is given to the tenant of an agricultural holding a notice to quit part of the holding, being such a notice as is rendered valid by the last foregoing section, then, if the tenant, within twenty-eight days after the giving of the notice, or, in a case where the operation of the notice depends on any proceedings under the foregoing provisions of this Act, within twenty-eight days after the time when it is determined that the notice has effect, gives to the landlord a counter-notice in writing to the effect that he accepts the notice to quit as a notice to quit the entire holding given by the landlord to take effect at the same time as the original notice, the notice to quit shall have effect accordingly.

34 Reduction of rent where tenant dispossessed of part of holding

Where—

- (a) the tenancy of part of an agricultural holding terminates by reason of such a notice to quit as is rendered valid by section thirty-two of this Act; or
- (b) the landlord of an agricultural holding resumes possession of part of the holding in pursuance of a provision in that behalf contained in the lease ;

the tenant shall be entitled to a reduction of rent, of an amount to be determined by arbitration, proportionate to that part of the holding and in respect of any depreciation

of the value to him of the residue of the holding caused by the severance or by the use to be made of the part severed:

Provided that, in a case falling within paragraph (b) of this section, the arbiter, in determining the amount of the reduction, shall take into account any benefit or relief allowed to the tenant under the lease in respect of the land possession of which is resumed by the landlord.